



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 22, 1992

Mr. Lance Beversdorff  
Staff Attorney  
Texas Youth Commission  
P. O. Box 4260  
Austin, Texas 78765

OR92-363

Dear Mr. Beversdorff:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16226.

The Texas Youth Commission (the "commission") received an open records request from a commission employee for tape recordings of interviews taken during the investigation of the employee's allegations of sexual harassment. You state that you have released to the employee a copy of the tape recording of her own interview; you seek to withhold, however, tape recordings of interviews with three other commission employees pursuant to sections 3(a)(2) and 3(a)(3) of the Open Records Act.

The commission received the request for information on May 18, 1992. You requested a decision from this office on May 29, 1992. Consequently, you failed to request a decision within the 10 days required by section 7(a) of the act. Section 7(a) of the act requires a governmental body to release requested information or to request a decision from the attorney general within 10 days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within 10 days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. See *id.*

You contend that the requested tape recordings come under the protection of section 3(a)(3), the litigation exception, because the requestor/employee "has an EEOC charge of sexual harassment currently pending against TYC." The mere fact that information relates to reasonably anticipated litigation to which a governmental body may become a party does not constitute a "compelling reason" for withholding the information. *See, e.g., Hancock, supra.*

Section 3(a)(2) protects "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy . . . ." A demonstration that information comes under the protection of section 3(a)(2) constitutes a compelling reason for nondisclosure because this exception protects the privacy interest of a third party. *See Open Records Decision No. 71 (1975).*

You raise section 3(a)(2) because you are concerned about the privacy rights of the employee who has been accused of sexual harassment. The test for section 3(a)(2) protection is the same as that for information protected by common-law privacy under section 3(a)(1). To be protected from required disclosure the information must contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). This office has previously held that there is a legitimate public interest in allegations of sexual harassment in the work place and the manner in which investigations of those allegations are conducted. *See Open Records Decision No. 579 (1990) (copy enclosed).*

We attempted to listen to the copies of the recordings that you submitted to this office, but portions of the tape recordings were inaudible.<sup>1</sup> We conclude that the audible portions of the tapes do not contain any information that would constitute information that would meet the tests for common-law privacy. The information is not about the private affairs of the accused employee, but rather about his conduct at work. *See id.* The content of the audible portions of the tapes does not suggest that the inaudible portions of the tapes would meet the test for protection under section 3(a)(2). If, in light of this ruling, you believe the audible portions of the recordings warrant the protection of section 3(a)(2), please make

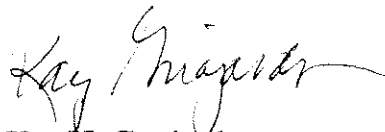
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<sup>1</sup>We assume that the inaudible portions of the tape recordings were the result of technical difficulties the commission encountered while reproducing the tapes.

another audible recording of those portions and resubmit them to this office for a subsequent ruling. Otherwise, the commission must release the recordings in their entirety. *See id.*

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-363.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Opinion Committee

KHG/RWP/lmm

Ref: ID# 16226

Enclosure: Tape recordings  
Open Records Decision No. 579

cc: Ms. Susie Gonzalez  
1813 North 13½ Street  
McAllen, Texas 78501  
(w/o enclosure)